IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY APPLICATION NO. 179 OF 2007
IN
COMPANY PETITION NO. 319 OF 1998

Gujarat Lease and Finance Ltd. ... Petitioners.

V/s.

The Official Liquidator, Consolidated Foundation(India) Ltd. (in liquidation). ... Respondent.

And

Mr. S.S. Wagle. ... Applicant.

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Zenobia Irani i/b. Aras & Co. for the Applicant.
Mrs. K.V. Gautam, Dy. O.L.

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CORAM : DR. D.Y.CHANDRACHUD,J.

13th April 2007.

P.C. :

. In Company Application 75 of 2004 taken out by the Applicant, an order was passed by Mr. Justice A.M. Khanwilkar on 18th August 2005. The Applicant had sought directions to the Liquidator to hand over possession of certain commercial premises situated at 108, Owners Industrial Estate, Gabrial Road, Mahim (West), Mumbai - 16. It appears that the Applicant had instituted a suit against the Company in liquidation for eviction

before the Small Causes Court contending that the Company was only a licensee. In an appeal arising out of the dismissal of the suit, the Appellate Bench of the Small Causes Court by its Judgment and Order dated 17th April 2003 accepted the plea of the Applicant and decreed the suit.

3. The earlier application taken out by the Applicant was allowed inter-alia subject to the following conditions :-

(i) The Applicant shall also file an undertaking that the applicant will not create any third party right, title or interest in the said premises without seeking prior permission of this Court and further that possession will be restored back to the Official Liquidator as and when such direction is passed by this Court.

(ii) The Applicant shall deposit Rs.7,50,000/- in this Court within a period of 4 weeks from today as

assumed which will be handed over to the Respondent Official Liquidator.

4. Counsel appearing on behalf of the Applicant states that an amount of Rs.7.5 lakhs was deposited with the Official Liquidator.

5. A Writ petition under Article 227 of the Constitution was instituted by the Liquidator to challenge the order of the Appellate Bench of the Small Causes Court and it has been stated that the Petition has been admitted on 8th March 2006. The Applicant is about 80 years of age and he has stated in paragraph 13 of the affidavit in support of this Company Application that he intends to carry on business in the premises of which he has now obtained possession from the Liquidator, together with his daughter and son-in-law in the name of a Company called Compunix Hi-Tech Pvt. Ltd. Counsel appearing on behalf of the Applicant states that the Applicant, his daughter and son-in-law are the only Directors of the Company and the entire share capital of the Company is held by the Applicant's daughter and son-in-law.

6. The relief that has been sought in the Company Application is that the Applicant may be relieved from the undertaking not to create any third party interests. The order dated 18th August 2005 passed by this Court, recorded the undertaking of the Applicant and it was only on that basis that the Applicant was allowed to take over possession of the premises from the Liquidator. Hence, it would neither be appropriate nor proper to relieve the Applicant of the undertaking. At the same time, it is evident from the affidavit in support that the Applicant and his wife who are considerably at an advanced stage desire to obtain some income from the premises and a business is proposed to be carried out by the Applicant together with his daughter and son-in-law. So long as the Company, Compunix Hi-Tech Pvt. Ltd. and its Directors do not claim any interest in the premises, there should be no objection in permitting the Applicant to carry on business therein. It is, however, specifically undertaken on behalf of the Applicant that the Applicant shall not create any third party interest in the premises.

7. In the circumstances, the Company Application is disposed of, with the clarification that while it would be open to the Applicant to permit the business to be carried out in the premises in the name of Compunix Hi-Tech Pvt. Ltd. of which the Applicant has stated that he is a Director from 1st December 2006, this shall be subject to the condition that :

The Company - Compunix Hi-Tech Pvt. Ltd. and each of the Directors including the daughter and son-in-law of the Applicant shall file undertakings before this Court that :

(i) they shall not claim any right, title or interest of any nature whatsoever in the premises; (ii) no third party rights shall be created whatsoever in respect of the premises; (iii) no additional directors shall be inducted without the prior permission of the Court; and (iv) vacant and peaceful possession shall be returned back to the Official Liquidator within a period of 72

hours of any such directions being passed by the Court.

8. The Company Application is accordingly disposed of.